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# R E P O R T

OF THE

## CASE OF THE LOUIS, FOREST, MASTER;

APPEALED FROM

THE VICE-ADMIRALTY COURT AT SIERRA LEONE,

AND DETERMINED IN THE

*HIGH COURT OF ADMIRALTY;*

On the 15th of December 1817.

WITH AN APPENDIX.

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By JOHN DODSON, LL. D. ADVOCATE.

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L O N D O N:

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Judge of the High Court of Admiralty—The Right  
Honourable Sir WILLIAM SCOTT.

FOR THE RESPONDENT,

The King's Advocate, } Counfel.  
Dr. ADAMS,

The King's Proctor.

FOR THE APPELLANT,

Dr. LUSHINGTON, } Counfel.  
Dr. DODSON,

Mr. TEBBS, Proctor.

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# R E P O R T

OF

## A C A S E

ARGUED AND DETERMINED IN THE

HIGH COURT OF ADMIRALTY,

&c. &c. &c.

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LE LOUIS, FOREST.

THIS was the case of a *French* vessel which sailed from *Martinique* on the 30th of *January* 1816, destined on a Voyage to the Coast of *Africa* and back, and was captured ten or twelve leagues to the southward of *Cape Mesurada*, by the *Queen Charlotte* cutter, on the 11th of *March* in the same Year, and carried to *Sierra Leone*. She was proceeded against in the Vice-Admiralty Court of that colony, and the information pleaded—1st, That the seizors were duly and legally commissioned to make captures and seizures. 2d, That the seizure was within the jurisdiction of the Court. 3d, That the vessel belonged to *French* subjects or others, and was fitted out, manned, and navigated for the purpose of carrying on the *African* Slave-trade, after that trade had been abolished by the internal laws of *France*, and by the treaty between *Great Britain* and *France*.

4th, That the vessel had bargained for twelve slaves at *Mesurada*, and was prevented by the capture alone from taking them on board. 5th, That the brig being engaged in the Slave-trade, contrary to the laws of *France*, and the law of nations, was liable to condemnation, and could derive no protection from the *French* or any other flag. 6th, That the crew of the brig resisted the *Queen Charlotte*, and piratically killed eight of her crew, and wounded twelve others. 7th, That the vessel being engaged in this illegal traffic, resisted the King's duly commissioned cruisers, and did not allow of search until overpowered by numbers. And 8th, That by reason of the circumstances stated, the vessel was out of the protection of any law, and liable to condemnation. The ship was condemned to His Majesty in the Vice-Admiralty Court at *Sierra Leone*, and from this decision an appeal was made to this Court.

*For the Respondent the King's Advocate and Adams* contended, that the stipulation in the additional article of the treaty between *Great Britain* and *France*, of the 20th of *November* 1815, carried with it a legal presumption that the Slave-trade had been abolished by the laws of *France* prior to that period; and that the official declaration of *M. de Talleyrand*, dated on the 30th of *July* in the same year, carried back the presumption still farther. They admitted that an *Intention* only on the part of the *French* Government to abolish the traffic would not be sufficient, and that there must be some legal Act for that purpose; but they argued that

the Treaty itself was evidence that such an act had really taken place. That if not a proof conclusive in law, it was at least sufficient to throw the *onus probandi* most strongly on the adverse party, and imposed upon them the necessity of shewing that, by the laws of *France*, the Slave-trade was allowed at the time of capture: the legal presumption was, that the treaty had been duly performed, and it was for the opposite party to rebut the presumption. They then cited the case of the *Amedie*, in which it is 1 Dougl., 84. in Note. laid down generally by the Superior Court, that the Slave-trade is *prima facie* illegal; and that the burthen of proof is on the claimants, to show that the laws of their own country permit such a traffic.

The evidence, however, they contended, contained explicit proof that the treaty had actually been carried into effect; and in support of this, they again referred to the official declaration of the *French* App. (1.) Minister, stating that *Directions had been given* for the abolition of the trade. This, they said, was a declaration *not of an intention to abolish, but of the abolition itself,—of an act done and past.* This was still further confirmed by a subsequent Act; viz. the ordonnance of the *French King* in App. (R.) *January 1817*, which inflicted particular penalties on persons engaging in the Slave-trade. It was no just inference that because additional penalties were imposed upon the continuance of the trade, there was therefore no previous abolition of it; for prohibitions of particular practices were often enacted in the first instance, and afterwards additional penalties imposed, as in many of our own acts of Parliament.

There was, therefore, the fullest and most complete evidence of the abolition ; and that this was the state of the law, was confirmed by the conduct of the parties themselves. The Master admitted that he had heard that the Slave-trade had been prohibited by the laws of *France* : there was no direct authority from the governor of the colony, authorizing or recognizing the trade ; and the ship's papers manifested a studious concealment that she was at all engaged in it. The conduct of the parties was in itself an acknowledgement of their sense of the illegality of the trade ; of their consciousness that they were offending against the laws of their own country.

Adverting to the character of the vessel, they admitted that she was *French* ; having a register as such, and bearing the *French* flag. But she had likewise *British* colours on board, and had recently been the property of *British* subjects ; and therefore there was, on the most limited grounds, a special justification to persons under *British* authority to examine into her national character. It was not, from a mere idle curiosity that this examination was resorted to ; for it was expressly certified that the vessel had been *British*, and there was nothing but the mere assumption of flag to distinguish her as having acquired another character.

With respect to the employment of the vessel, they contended that there was positive proof, in the evidence of two of the witnesses, that the vessel was actually about to take twelve slaves on board at *Mesurada* ; that the act certainly had not been completed, neither was the consummation of it necessary to render the

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the property liable to confiscation, for the Court had already laid it down that, in cases of this kind, it made no difference in what stage of the employment the ship was taken, "whether in the inception, or the prosecution, or the consummation of it." Dodd. n. 86.

They then referred to the articles which were found on board this vessel; the quantity of water and of provisions, consisting principally of beans; the number of irons, of which there was no specification in the manifest; and the platforms and decks of the vessel; from all which they inferred that the trading in slaves was one of the principal objects of the voyage, and not an incidental and secondary purpose; but that the ship had been sent mainly and primarily to engage in that particular trade.

The vessel was taken to *Sierra Leone*, and the case brought before the Vice-Admiralty Court in that colony; a court constituted by patent, and possessing nearly the same authority as the High Court of Admiralty. In that court an information was exhibited; and the Judge, considering that the vessel was engaged in a trade contrary to the general law of nations and to the particular laws of her own country, had very properly rejected the claim, and passed a sentence of condemnation on the property. The jurisdiction of that Court they contended could not now be called in question by the Claimant, since he both petitioned the Judge there to proceed, and has since regularly appealed against the sentence, instead of acting on the assumption that it was a mere nullity. The appellant, therefore, having recognised and voluntarily submitted to the jurisdiction cannot now be heard to question it.



On these facts, and on the authority of former cases, they contended that the claimant had precluded himself from claiming restitution of his property. The objection that arises is that familiarly known under the title of *Turpis Causa*. Courts of Justice are bound not to protect or encourage *Crimes*; and to take care that they do not render themselves accomplices of wrong-doers. This was the principle acted upon in the case of the *Amedie* in the Prize Court; and in the *Diana* the same ground of exclusion was deemed proper to be applied in this Court; for the Court there said, "The general injustice of a claim  
 " may be the subject of cognizance in a municipal  
 " Court. A claim founded on piracy, or any other  
 " act, which, in the general estimation of mankind, is  
 " held to be illegal and immoral, might, I presume,  
 " be rejected in any Court on that ground alone." This Court, in acting on the general principles adopted in other Courts, has held, that parties are debarred from claiming restitution by the circumstance of their becoming alien enemies; and there seems to be no ground of distinction why they should not also be debarred by an offence of this kind, which has been adjudged to have that effect in the Prize Court. It is a common expression, that parties are to come into Court with clean hands; but here they come into Court with hands stained with blood, with the guilt of murder voluntarily incurred, in the prosecution of another act in itself scarcely less criminal.

They admitted that the Courts of one country are not authorized to take cognizance of breaches of the mere municipal law of another, but contended that the present was a case of a very different description;  
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for here the Court proceeds on the breach of a *general law*, and only adverts to the law of the particular country to see whether it affords any protection to the offender. It is most reasonable that the Slave-dealers should be restrained by foreign cruisers, as well as by those of their own country, otherwise an abolition in which all the great Powers of *Europe* have joined might be rendered perfectly illusory by the act of the pettiest State in the world; and peace in *Europe* would only be the signal for war in *Africa*.

Dr. *Lushington*, for the appellant, denied the 1st, 6th, and 7th positions assumed in the information, and contended, that, in time of peace, on the high and open seas, where *Great Britain* does not lay claim to any peculiar jurisdiction, there exists no right of searching the ships of other nations. The capture in question was made 10 or 12 leagues to the southward of *Cape Mesurada*, and at the distance of at least 120 miles from the peninsula of *Sierra Leone*, which is bounded on the north by the river *Sjerra*, on the south by the river *Caramancas*, on the east by the river *Bunie*, and on the west by the ocean. The place of capture was therefore as much removed from the local jurisdiction of *Great Britain* as the middle of the *Atlantic* or *Baltic*. It was pleaded, that the *Queen Charlotte*, the captor, was entitled to seize vessels employed in the Slave-trade, being duly commissioned; but the learned Gentleman denied the fact, that she had any commission for that purpose, or that any such commission could issue by the general law of nations, without some express convention for

the purpose. The claim then amounted to this, that there existed a right of search during peace. If such a right existed at all, it must be founded on public law, or upon express treaty. If upon public law, the right must be shown necessarily to arise from some principle admitting of no dispute. Now, where was this principle to be found? there was an entire absence of all authority in the writers on public law, and no instance could be shown of the exercise of such a right from time immemorial: this was conclusive proof against its existence; and there was not even a claim advanced on behalf of *Great Britain* or any other country. If the right were claimed by virtue of a convention, that convention must be shown. The *French* nation might, if they pleased, concede to *Great Britain* the right of searching their ships any where, but so important a right could not exist by implication. It was a right scarcely consistent with the independence of that country, and could not be claimed but in virtue of express agreement. Even if it should be expressly stipulated in a treaty between *Great Britain* and *France*, that *France* would no longer permit this trade to its subjects, no right of seizure and confiscation would thereby arise to the *British* nation. Where the conditions of a treaty were violated, the law of nations directed the mode which should be pursued in order to obtain redress, without immediately resorting to force and bloodshed. The first step was application to the Government of the offending party, and it was not until after a denial of justice that recourse could be had to violence to obtain reparation. It was so, not only where

where an injury had been received contrary to the general laws of nations, but even in cases expressly provided for by treaty. *Great Britain* had already strenuously maintained this principle. When in 1789 certain *British* ships were seized for illegally trading contrary to the treaties between *Great Britain* and *Spain*, *Great Britain* would not even enter into the question of right until an apology was made for the act of violence committed, and full reparation made to those who had been injured. In the late treaty with the *United States* there were certain stipulations as to the fisheries; but it could not be maintained that either nation should support its rights by capture on the high seas. If then this were the true doctrine, even where the offence has been committed against the party seeking redress by violence; *à fortiori*, was it where the offence was committed against third parties, with whom we have no alliance or treaty? It was impossible that so strong a right could exist to redress the injuries of others as there might be to avenge our own. The right of granting reprisals, which those violent acts in effect were, did not exist where the acts were done towards third parties. But the clearest and strongest argument against the existence of this right of search and confiscation in time of peace arose from a consideration of the extent to which, if admitted at all, it must necessarily go, and the consequences which might and would result from it. If *British* ships had a right to examine *French* ships on the high seas, on the suspicion of their being engaged in this trade, they might stop, detain, and bring in every *French* ship leaving a *French* port.

port. The right of search would extend over all the ocean ; and *vice versa*, the whole mercantile navy of *Great Britain* would be subjected every where to the search of *France, Denmark, Sweden, and Holland* ; and then how were such cases to be adjudicated ? If *Great Britain* was not prepared to submit to this degradation, she had no right to inflict it on others. The consequences of resorting to it upon this occasion had been bloodshed and murder ; nine lives had been lost, and 15 of the crew wounded ; and these consequences must inevitably follow wherever violence was resorted to. It was plain, then, that no right of search existed, not even though *France* might have stipulated with *Great Britain* that she would not allow her subjects to carry on the Slave-trade. If any right of search were necessary for the suppression of the trade, it must be arranged by convention between the contracting parties. It could not originate in the act of one alone ; it must be under limitations and conditions as to time, place, and circumstances ; and the present lawless attempts at extirpating it by violence, could have no other effect than that of irritating foreign nations, and protracting the period of its utter extinction. If, then, there existed no right of search and detention, all that had been done was mere lawless violence ; unjust *ab initio*, and a violation of the law of nations. The seizers were the aggressors, and had committed an act of piracy.

He then proceeded to argue, that it was not possible to contend that the Slave-trade was piracy, or that those who engaged in it might be destroyed at the pleasure of any nation which  
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has abolished it, even though so engaged against the internal regulations of their own Government. It was not piracy either by the law of nations, or the law of *Great Britain*. It was not by the law of nations, because to make it so, it must either have been so considered and treated in practice by all the civilized States in *Europe*, or made so by virtue of a general convention; whereas, on the contrary, it had been carried on by all nations, even by *Great Britain* herself, until within a few years, and was at this moment carried on by *Spain* and *Portugal*, and not even at the present hour prohibited altogether by *France*. If it were piracy, *Spain* and *Portugal* could not carry it on; for pirates might be seized, be they of what nation they may, but the Slave-trade was entirely different from piracy. All nations had a right to seize pirates, because they were general robbers, *hostes humani generis*; their violence was not confined to one nation, but was universal; and the general law of self-preservation gave a right to all to seize persons so conducting themselves. But in the Slave-trade it was quite different. The acts of injustice were confined to one description of persons with whom other nations had no concern; and there was no possibility of the same acts being practised against *Great Britain*. The Slave-trade might resemble the conduct of the *Algerines*; they plunder and enslave other nations without a cause; but this country had never considered them as liable to general detention, nor attempted to visit upon them their outrages against others, so long as they abstained from attacking *British* subjects. The

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51 G. 3. c. 25.

Slave-trade could not be considered by *Great Britain* as piratical when committed by foreigners, because it was not piracy by the laws of this country. Piracy was a defined crime, and there had been laws existing against it for centuries; but neither before nor since the abolition had any individual been prosecuted under those laws. An act had been passed in 1811, to make the Slave-trade a criminal offence punishable by transportation, all which clearly demonstrated that piracy it was not. But even if it were piracy, the property belonging to pirates, not taken *piraticè*, was not confiscable by an act of piracy until conviction; for until conviction even pirates might dispose of their own property. Here there was no property belonging to third parties—no slaves; neither was there any proceeding according to law; for piracy must be tried according to the statutes, in a very different form. If, then, there was no right of search, the resistance was lawful, and no penalty could arise from it under any law whatsoever.

He then proceeded to deny that the capture had been made within the jurisdiction of the Court of *Sierra Leone*; and contended that that Court had no jurisdiction whatever. It had no jurisdiction *ratione loci*, because the seizure was made out of the limits within which its ordinary jurisdiction was confined: none, because of the subject matter, for that was not triable by any municipal Court whatsoever: none, by reason of any act of Parliament, for there was none such; and if there were, it could not be binding on foreigners. There was not one word in the warrant for appointing

ing this Court, or in the patent, whence a shadow of jurisdiction could be drawn; the prize commission was at an end by the termination of the war; and although some of the forms observed in the present proceeding were prize, yet the ship was prosecuted as a forfeiture. The want of jurisdiction was, therefore, manifest on the face of the proceedings; they were all grossly irregular and unjust—all *coram non judice*. In the first instance, the witnesses were examined on prize interrogatories, then cross-examined *viva voce*; next an information was filed, then a motion issued, and then the witnesses were examined again on fresh interrogatories; the proceeding was, therefore, neither according to the law of nations, nor to the civil law, nor to the common law; the party proceeded against had no legal means of defence; and was therefore entitled to have the sentence annulled with costs and damages, according to the precedent of the *Fabius*. 2 Robinson, 245.

He then adverted to the position that the vessel belonged to *French* subjects or others, and was fitted out for the purpose of carrying on the Slave-trade, after it had been abolished by the internal laws of *France*, and by the treaty between this country and *France*; and was therefore condemnable. That the property belonged to *French* subjects, he observed, was fully admitted: a possessory right was quite a sufficient proof of property in a municipal court, but here there was other proof. The ship belonged to *Teychoire* and *De Chapte*; so also the cargo, except that the master had an interest to the extent of 8,000 dollars. There was the *French* register



register on board, in the name of *Teyssière*; the passport; and the clearance from the custom-house at *Martinique*. There was also the evidence of the master in preparatory, and of all the other witnesses, as to *De Chaptè* being the owner; and there was nothing to contradict this testimony, or to show that the property belonged otherwise; no averment even of the property being *British*. With respect to the vessel being fitted out for carrying on the Slave-trade, he did not mean to deny that she was adapted for that purpose; but there was no evidence to show that that was the certain object of the voyage; and, adverting to the evidence, he contended that the Slave-trade was a contingent object of the voyage, and no more.

He then proceeded to contend, that the trade was not abolished by the internal laws of *France*, though by treaty it was agreed that it should be so. *Buonaparte*, during his short possession of the government after his return from *Elba*, abolished the Slave-trade, and referred the punishment of any violation of his decree to the *French* tribunals.

On the 27th July 1815, Lord *Castlereagh* wrote to M. *de Talleyrand*, urging that the Slave-trade should not be revived, and questioning whether by the law of *France* it had not been abolished. *Talleyrand* in reply, by letter dated July 30th, 1815, stated, that the edict of *Buonaparte* was a nullity, but that the King had issued directions for the traffic to cease from the present time every where and for ever. By the additional article to the Definitive Treaty, dated November 20th, 1815, it was recited that *France* had abo-

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App. (G.)

App. (H.)

App. (I.)

App. (N.)

lished the Slave-trade, and that she would with *Great Britain* concert measures for its entire abolition by all nations.

On the 15th of *January* 1817, Sir *Charles Stuart* App. (P) wrote, and requested a copy of all orders, &c. relating to the abolition of the *French* Slave-trade; and on the 27th of *January* 1817, he received an answer, enclosing an ordinance dated the 8th of *January* 1817. App. (Q) App. (R) It was therefore quite clear, that, up to *January* 1817, there was no public ordinance of the *French* King prohibiting this trade; for if there had, Sir *Charles Stuart* must have known it, nor any ordinance at all; for if there had, Sir *Charles Stuart's* note must have called it forth; and the *French* government must have been anxious to produce it as a proof of their good faith. In the note, it was spoken of as *the* ordinance, which negatived the existence of any preceding ordinance. There could be no doubt, therefore, that the trade had not previously been abolished by any decree whatsoever. The ordinance itself did not abolish it totally, but merely abolished the introduction of slaves into the *French* colonies; and then it reserved to the *French* tribunals the right of adjudging the cases by their own law. The case then came to this—that the Slave-trade was not abolished by *Buonaparte's* decree after the restoration of the King; that the *British* government had not been able to extract any ordinance prior to *January* 1817; that none did exist; and therefore that a slave adventure was lawful prior to 1817, and was so still *sub modo*, and triable only in *France*; and all presumption in favour of the existence of orders in conformity

to stipulations was done away by the letter of Sir *Charles Stuart* and its answer. With respect to the point that the vessel had bargained for twelve slaves, and would have taken them on board if not prevented by the capture, the learned Gentleman contended that that fact was not sufficiently proved; he objected to the legality of some of the depositions, and argued that the fact was negatived in others; that it was quite improbable that twelve slaves should be taken on board to superintend others; and that the vessel not having been taken *in delicto*, no offence was consummated, nor was there any offence against the laws of *France*. Upon all these considerations, he submitted, that the decision of the Court below must be reversed, and the ship restored with costs and damages.

*Dodson*, on the same side, contended, that the ship had been illegally taken, because the cruizer by which she had been seized was not duly authorized to capture foreign vessels. No commission had been produced; and it was not very probable that there was any such in existence; since the statute enabling Governors of colonies to authorize persons to seize and prosecute ships engaged in the Slave-trade was the law of this country alone, and was strictly confined to *British* subjects, or to persons resident within *British* dominions.

He then laid it down as a primary and fundamental rule of the Law of Nations, that *the right to visit and search foreign ships on the open sea does not exist in time of peace*; and this position he proceeded

to establish upon the three grounds of *reason, authority, and practice.*

During the existence of war neutral vessels might be engaged in the conveyance of enemy's property, or of articles contraband of war, calculated to strengthen the military resources of the enemy. The duty of self-protection gave all belligerent States a right to secure themselves from the injurious effects of such practices, and such security could only be obtained by visitation and search. This therefore was a right founded on necessity, but by that necessity it was also to be strictly limited. Now it was obvious that during peace no such danger could exist; visitation and search was not required for any purposes of self-protection, and consequently the practice had no longer a just and lawful foundation. During peace no State was privileged to appropriate to itself the main ocean, or to interdict the free and uninterrupted use of it to the commercial marine of other countries. If *Great Britain* had a right to search foreign ships, foreign ships would in their turn have a right to search those of *Great Britain*; for the rights of all countries must in this respect be equal. *Great Britain* had no exclusive rights upon the ocean; none which did not equally belong to all other nations. The *Empire of the Seas*, in the modern acceptation of the term, does not imply any exclusive legal privileges; and the only meaning that can justly be assigned to it is, that in time of war the nation possessing it has a perfect mastery over the fleets of the enemy, and can secure to itself all the important advantages arising from such a superiority; but in time of peace it conferred

no peculiar privilege. If the right of visitation and search belonged to *Great Britain*, it must equally belong to *France*, and to all other nations. They must all, even the pettiest State, have the liberty of stopping every where (for if any where, then every where) *British* vessels; and how could *Great Britain* endure this? If then she was not prepared to submit to such treatment from others towards herself, she must forbear to exact the like submission from them; for it was with nations as with individuals, they must learn not to do to others what they would not suffer to be done to themselves. It had been asked, whether peace in *Europe* was to become the signal for war in *Africa*? and asserted that it must become so, if slave-traders were to be restrained only by the cruisers of their own nation; but what course of conduct was so likely to lead to war and violence, as that of endeavouring to enforce the claim of visitation and search against the vessels of foreign and independent States? The consequences must naturally and necessarily be what they had been in the present instance, the loss of lives and the destruction of property; and it was impossible to foresee to what an extent these consequences might go, or what mischiefs might not be produced by them. If there existed a right to bring in any one ship, then there must be the same right to bring in all, and at all times; independent nations would be irritated, and wars and tumult would be produced and perpetuated throughout the world.

With respect to the *authorities* upon which the right of visitation and search would require to be supported, he observed, that such a right in time

of peace had never been asserted by any writer on the law of nations. None of them went further than to assert that a *belligerent* might lawfully search foreign ships, and their silence on the subject of this right, during peace, was almost conclusive against its existence. On the other hand, numerous passages are to be found in writers of the greatest celebrity, from which the contrary doctrine is fairly to be inferred. The right of navigating the ocean freely, and without molestation, is asserted every where, in every page of the best authors, such as *Grotius*, *Wellwood*, *Vattel*, *Vasquius*, &c. quotations almost innumerable might be made to this effect, but the principle was so clear that it was scarcely necessary, or indeed proper, to trouble the Court with authorities in support of it.

Adverting to the *practice* of nations as functioning or disavowing the right in question, he observed, that the *Portuguese*, at the time of their great power in the *East Indies*, wished to exclude all other *European* nations from any commerce with that portion of the globe, and claimed the right of stopping ships engaged in such commerce. This, which *Vattel* calls “a pretension no less iniquitous than chimerical,” was made a jest of by the nations whose commerce was interdicted, and they agreed to look upon any acts of violence committed in support of it, as just causes of war. The answer of Queen *Elizabeth* (anno 1582) to the *Spanish* ambassador upon a similar occasion, was express upon this point; she stated broadly “that her subjects had a right

B. 2. ch. 2  
C. 24.

Vide Camden.

“ the air and of the sea was common to all.” In 1737, *Spain* again claimed the right of searching *British* ships in the *American* seas; but this asserted right was again expressly denied by *Great Britain*, and the conduct of *Spain*, in this respect, was termed by Mr. *Pitt* (afterwards Lord *Chatham*) “ an usurpation, an inhuman “ tyranny claimed and exercised over the *American* “ seas.” It occasioned a general indignation throughout the kingdom, and an instant demand for redress. *Spain*, in consequence of the remonstrances addressed to its Government, stipulated to make good the losses sustained by *British* subjects, which stipulation implies an admission that she had done wrong. On non-payment of the remuneration agreed upon, orders for reprisals were issued by *Great Britain*, and these were followed by the war which terminated in the peace of *Aix-la-Chapelle* in 1748. In confirmation of this statement he read several extracts from the addresses of the Lords and Commons, His Majesty’s answers, and other official documents. He then referred to the case of the *British* ships captured at *Nootka Sound* in 1789, which he observed was nearly similar. There, a demand was immediately made by *Great Britain* for adequate satisfaction, and the restitution of the captured vessels, accompanied by a refusal to enter upon any discussion whatever until that demand had been complied with. A similar claim, lately made on the part of *Sweden*, had been strenuously and successfully resisted by *Great Britain*.

Then if the right of search does not exist under the general Law of Nations, is it founded on any *Treaty* between this country and *France* as applicable

to the Slave-trade in particular? No.—*France* was asked to make such a Treaty, and gave a decided negative to the proposal. This appears from the papers submitted, in *April* 1815, by order of The Prince Regent to the House of Commons, on the subject of the application of the *British* Government to that of *France*, for the abolition of the Slave-trade, and particularly from the letter of Lord *Castlereagh*, App. (B.) & (C.) 6th *August* 1814, to the Duke of *Wellington*, and the consequent correspondence between his Grace and Prince *Talleyrand* and M. *de Jaucourt*. The Duke of *Wellington*, on communicating to Lord *Castlereagh* what had passed, states, that the proposal of a reciprocal right of search in the *African* seas was so disagreeable to the *French* Government and nation, App. (D.) “that there was no chance of succeeding in getting it adopted.” Afterwards the matter was again taken up in the congress of *Vienna*, with a result quite as unsatisfactory; for in one of the conferences there held, the *French* Minister expressly declared that “he App. (E.) “could admit no other maritime police than that which “every power exercised over its own vessels.” It is clear therefore that neither by the general Law of Nations, nor by a particular convention between the two States, does the right of visitation and search exist. Even if the two countries had reciprocally agreed to prohibit the Slave-trade and to permit the right of search, a refusal to abide by this agreement by the subjects of one of them, would not justify the other in immediately resorting to the measure of capturing their ships. The first step to be taken in case of breach of the treaty would be remonstrance by the offended party,



party, and if that was disregarded, then, but not before, reprisals might issue. This was the utmost that could be done by the Law of Nations, if it was our own interest that had been affected; *à fortiori* where the injury of which we had to complain was directed against the interests of a third party, namely, the natives of *Africa*.

It is charged in the information that this ship was **taken within** the jurisdiction of the Vice-Admiralty Court at *Sierra Leone*; but this is not made out in proof; on the contrary it appears, from all the evidence in the cause, that the capture was effected ten or twelve leagues to the southward of *Cape Mesurada*, which is at a great distance from the limits of the colony, as settled by act of parliament. There is no pretence for saying that the original and ordinary commission of the Judge would give him jurisdiction beyond those limits, nor has there been any subsequent extension of the jurisdiction of that particular court. The act for the abolition of the Slave-trade gives no such jurisdiction, at least so far as the subjects of foreign States not engaged in hostilities with this country are concerned, for one part of it applies only to the property of *British* subjects, and to persons resident within *British* dominions, and the remaining part to slaves taken as prize during war. The only other statute which extends the jurisdiction of Vice-Admiralty Courts was passed for the purposes of the Revenue Laws, and is expressly confined to Courts in *America*. The capture therefore was **made** neither within the limits of the colony nor the **jurisdiction** of the Court at *Sierra Leone*. The whole

31 G. 3. c. 55.  
f. 44.

47 G. 3. c. 36.

49 G. 3. c. 107.

whole transaction was *coram non judice*, and the proceedings altogether a nullity.

It has been said, that the claimants come into Court with hands stained with blood; but that stain rests on the captors who attacked, and not on the claimants who defended themselves. As there existed no right of search, all that the captors have done is lawless violence; they were the aggressors in violation of the Law of Nations, and all the evil that has followed must be attributed to them.

Then it is argued that the party being brought into Court, whether rightly or not, cannot receive restitution because he is in *delicto*. If some Courts may act upon the principle of refusing restitution on this ground, it is by no means clear that all Courts are possessed of the same power. It may be different in the Instance Court of Admiralty from what it is in the Prize Court. But what is the *delictum* here? In the information it is charged to be *piracy*; but it has been demonstrated by Dr. *Lushington*, not to come within any legal definition of that offence. Then it is said, if not an offence against the Law of Nations, it is an offence against the internal laws of *France*; but are the municipal Courts of one country, armed with authority, to notice offences against the internal law of another country? How can the *French* law give jurisdiction to an *English* Court sitting at *Sierra Leone*? Both the Decree App. (G.) of the Usurper (which the present *French* Government holds to be null) and the Ordinance of the King, which purports to be dated on the 8th of *Ja-* App. (R.)  
*nuary* 1817, provide that offences by *French* subjects shall be tried in *French* Courts. They direct, like-  
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wife, the mode in which the penalties shall be applied ; and how is it possible that a *British* Court sitting at *Sierra Leone* can apply the forfeitures as directed by the *French* law ?

Having in the next place noticed the irregularity with which the cause had been conducted in the Court below, he proceeded to contend, that no sufficient proof had been produced that any *French* law prohibiting the Slave-trade was in force when the present transaction commenced. The Ordinance of the 8th *January* 1817 being posterior in point of date, could have no bearing upon it. The Decree of the Usurper was considered by the legitimate Government, then restored, to be null and void, and could therefore have no operation. The Treaty of the 20th *November* 1815, though containing an assertion that the Slave-trade was abolished in *France*, did not purport to be in itself a law forbidding *French* subjects to engage in the traffic ; and even if that Treaty could be considered as amounting to a prohibitory law on the subject, it was not known at *Martinique* when the present voyage commenced, and consequently was not binding on the subjects of the *French* Crown resident within that part of its dominions. The Declaration contained in the *French* Minister's letter (30th *July* 1815), that the King of *France* had issued directions that the traffic in slaves should cease throughout his dominions, could not in itself be considered as conclusive evidence of the *French* law, much less as the law itself. *Non constat* what became of those directions, or to whom they were addressed. Certainly it is not in proof, either that the directions themselves, or any law or ordinance resulting from them, have been duly promulgated within the

App. (R.)

App. (G.)

App. (S.)

App. (I.)

the *French* dominions. It is said, however, that this assertion of the *French* Minister respecting the directions issued for the abolition of the traffic, coupled with the recital in the Treaty to the same effect, is at least presumptive evidence of the *French* law, and throws on the claimant the burthen of proving it to be otherwise; but the weight of this burthen is entirely removed by the production of the ordinance of the 8th *January* 1817, which, in answer to an application from the *British* Minister for ordinances, laws, &c. is produced as *the* ordinance, and which must therefore be considered as *the only law* which had been passed on this subject. If any previous laws or ordinances had been in existence, they must have been produced when so demanded. It was clear, therefore, that no such laws or ordinances had been passed by the *French* Government until after this transaction had taken place, and consequently that no offence had been committed against the laws of *France*.

*The King's Advocate and Adams* in reply admitted the proposition to be true *generally* that the right of visitation and search does not exist in time of peace, but denied it to be so *universally*. Occasions, they said, may and must arise at a period when no hostilities exist, in which an exercise of this power would be justifiable, and instanced the case of a foreign ship exporting goods from a *British* colony contrary to the provisions of the Navigation Laws. A vessel which has been guilty of so serious an offence against the laws of this country may be visited at sea by a *British* cruizer and brought before a *British* tribunal for legal adjudication. The rule of law, therefore, which

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which has been contended for on behalf of the Appellant, cannot be maintained as an universal proposition, but is subject to exceptions, and within those exceptions must be included the present transaction, which is a transgression not only of municipal law but likewise of the general Law of Nations. That the property of parties so offending should be liable to seizure and confiscation is not a novel doctrine now for the first time attempted to be introduced into the code of the Law of Nations. Even at so distant a period of time as that in which the laws of *Oleron* were framed, it was permitted to seize the property of all persons enemies to the Holy Catholic Faith in the same manner as that belonging to pirates. Piracy, therefore, was not, as has been contended, the sole ground of seizure in time of peace. The enemies of the Holy Catholic Faith were in those days not deemed within the pale of the Law of Nations, and therefore their property was liable to seizure wherever it might be found. In whatever light the Slave-trade may have been viewed in former times, it must no longer be deemed within the protection of the Law of Nations, especially since the Declaration signed by the Ministers of the different *European* Powers assembled in Congress at *Vienna*, that the trade was *repugnant to the principles of humanity and of universal morality*. From that period at least, a traffic in slaves must be considered *a crime*, and it is the right and duty of every nation to prevent the commission of crime. A party who becomes an alien enemy, though guilty of no personal turpitude, is debarred from demanding restitution of his property in a Court of Justice; *à fortiori*, therefore, should a person who embarks

barks in a trade stigmatized as this has been, and denounced as a crime by authority of so high a nature. Upon the whole, they submitted, that the vessel having illegally resisted the visitation and search of those who were duly authorized to enquire into her voyage and its objects, and having been engaged in a traffic prohibited by the laws of her own country, and contrary to the general laws of humanity and justice, ought not to be restored to the claimant.

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After the argument had been closed, the commission of the captor was brought in. It was granted by the Governor of *Sierra Leone* under the statute, App. (S.) 51 G. 3. c. 23. and authorized the captor to seize and prosecute ships, &c. liable to forfeiture for any offence committed against the said act, or any other act of Parliament passed for the abolition of the Slave-trade, and found upon or near the coast of *Africa*, &c. or within the limits of any of the colonies, settlements, forts, or factories thereof.

#### JUDGMENT.

*Sir William Scott.*—This ship was taken off *Cape Mesurada*, on the coast of *Africa*, on the 11th or *March* 1816, by an *English* colonial armed vessel, after a severe engagement, which followed an attempt to escape.—The Court has found occasion to lament, that the particulars of this melancholy transaction are not more circumstantially brought to its notice; for in the mass of matter with which these proceedings are clogged, (matter which can have no application whatever to any question that could possibly be expected to arise in the case), no information is distinctly conveyed

veyed to the Court, what preliminaries led to this unfortunate conflict; in which no fewer than twelve lives were lost on the *British* side, and three on the other, and in which several persons on both sides were wounded. The Court is left to infer from the general course of the transaction, that it originated in a demand to visit and search the vessel, on a suspicion of her being a slave-trader, and in a resistance to that demand; the demand and the resistance being maintained to the length of producing the calamitous event which I have described.

The ship seized was in appearance and in fact a *French* ship, admitted both in the plea and in the argument to be so *unquestionably*, owned and navigated by Frenchmen, originally indeed built in *America*, and having been for a short time in *British* possession, which had ceased. She is immediately proceeded against in the Vice-Admiralty Court at *Sierra Leone* (whither she had been carried), as a *French* ship violating *French* law by the intention of purchasing slaves for the purpose of carrying them to her port in *Martinique*. There are some words in the libel which certainly can have no consistent meaning in the sentence in which they stand, but which, if they have any meaning at all, seem to intimate vaguely and unintelligibly an ownership somewhere else than in *French* subjects. Nothing, however, appears that at all excites a suspicion, that she is not, what she is treated as being both by the parties and by the Court, a *French* ship. For the mere circumstance of her having had *English* as well as other colours on board, cannot, in the known practice of merchant vessels, excite any such suspicion. After the admission which has been made,  
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that she had a contingent intention at least of trading in slaves, as well as other commodities if a convenient opportunity should offer, I feel it not requisite to enter into the detail of the many circumstances which compel that admission. The number of iron manacles on board, the construction of the platforms, the magnitude of the coppers, the quantity and quality of the provisions in store, the negotiations with the natives at *Mejorada*, the mysterious passages which occur in the correspondence between the owners, all tend one way, to shew a contingent, or rather a predominant intention so to trade; and this being admitted, the Court will not deem itself guilty of any injustice in holding that the legal question is the same as if the intention were single and absolute; for I have little doubt but that the contingency would have happened, and the opportunity would have offered, and would have been used.

At *Sierra* proceedings were commenced, which led to the first condemnation of the ship and cargo. Much argument has been employed to controvert the jurisdiction of the Court upon the point of locality, which I do not think it necessary to examine for the determination of the present cause. I will suppose the jurisdiction to be duly founded, as far as the matter of locality is concerned, and consider only whether the sentence can be sustained, giving the authority which pronounced it the benefit of a supposed indisputable jurisdiction.

At the outset of the proceedings the seizer describes himself as commissioned to make *captures* and seizures. It certainly appeared to be a singular commission that  
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authorized him to make *captures* in time of peace; and it was therefore not an unnatural curiosity on the part of the Court to desire to see it. The commission, after repeated requisitions, has been at last brought in, at a time extremely inconvenient for the purpose of any careful examination by the Court, if that were necessary. It may, however, be sufficient to state that this commission professes to be issued by the Governor of *Sierra Leone*, on the 25th of *January* 1816; to be founded on the Slave-trade act, 51 G. 3. and to authorize the commander to seize and detain (for I do not find that the word *capture* occurs) all ships and vessels offending against that act, or any other act abolishing the Slave-trade; and after stating these facts to observe, that neither this *British* act of Parliament, nor any commission founded on it, can affect any right or interest of foreigners, unless they are founded upon principles and impose regulations that are consistent with the Law of Nations. That is the only law which *Great Britain* can apply to them; and the generality of any terms employed in an act of parliament must be narrowed in construction by a religious adherence thereto.

Upon the course of the proceedings in the Court of *Sierra Leone*, after the manner in which they have have been adverted to in argument, I should desert my duty if I did not make some remark without meaning at all to depart from that tenderness which is usually shewn to mere informalities in the practice of Vice-Admiralty Courts. I have no doubt but that the Gentleman under whose cognizance these proceedings passed, carried out with him, among many other

other laudable qualities, a proper zeal for the purposes of the establishment of *Sierra Leone*; and I have as little doubt that he possessed a still higher zeal for his own immediate and paramount duty, the correct and equal administration of justice to all parties, who might come before him. But it is impossible to deny that there occur in these proceedings incongruities, arising (as it should seem) from inattention somewhere, not only to the common forms of law, but to the rational principles on which they are founded. What was the natural as well as legal course? Surely simple and obvious enough; for the proctor, after lodging in the registry all the papers found on board, and citing by monition the party to appear, to give a libel (answering to the bill of indictment in criminal cases) stating the facts imputed, and the law that is charged to be violated, and praying the examination of his witnesses thereon, and the judgement of the Court upon the effect of the documents and testimony to be produced. The party charged has a right to give his claim, stating the facts by which he undertakes to discharge himself from all legal censure, and to produce his witnesses thereon. Upon the result of the whole evidence so furnished, and of proper special interrogatories administered under the immediate authority of the Judge, the Court should pronounce its judgment. What is done here? In the first place the prize interrogatories calculated for the transactions of war are, instantly on bringing in, applied to this transaction, which, however denominated a *capture*, and with whatever fatal violence accompanied, is in truth a transaction of peace. Then, special

cial interrogatories are administered, *non constat* by what authority, some of them certainly not very fairly (at least according to common notions) addressed to the persons from whom the answers are to be extracted. It is in this late stage of the proceeding that the prosecutor brings forth his libel or charge, in which he tells the Judge (whose exclusive province it is to decide on the sufficiency of the proofs,) that "the case is incontestably proved," both in law and in fact; the law alleged being, that the Slave-trade is prohibited both by treaty and by the internal law of *France*; and the facts charged being, that the party was trading in slaves, and resisted search. In the same benevolent view of saving the Judge the entire trouble of performing his duty, the prosecutor informs him, that "there is *no doubt* of "the ship's being fitted out for the Slave-trade," and "that the evidence of the master is all evasive;" and prays a commission of inspection, to ascertain the fact of which he had just before told him that *no doubt whatever* existed, and the party is then cited by monition to appear, after the case has been thus *incontestably* proved against him; and then, without a single witness examined upon the libel, without the smallest evidence produced of the foreign law, though upon all principles of common jurisprudence foreign law is always to be proved as a fact, the Judge, having properly reduced the six counts of the libel to two, pronounces the ship to be a *French ship*, employed illegally (that is, against the *French law*,) in the Slave-trade; secondly, that she resisted by force the legal search of the King's cruizers; and that on

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both accounts herself and cargo are to be confiscated. There is, I think, considerable difficulty in vindicating the correctness of these proceedings, except upon the supposition, that persons charged with a concern in so odious a traffic are instantly to have a *caput lupinum* placed upon their shoulders, and are not entitled, in the course of proceedings against them, to the ordinary forms and measures of justice. However, without pressing further observation upon the proceedings which have led to the judgement, I hasten to the more important task of considering the propriety of the judgement itself; having just stated that the grounds are two—one, that this was a *French* ship, intentionally employed in the *African* Slave-trade; the other, that she resisted by force the King of *England's* commissioned cruizer.

Assuming the fact which is indistinctly proved, that there was a demand, and a resistance producing the deplorable results here described, I think that the natural order of things compels me to inquire first, whether the party, who demanded, had a right to search; for if not, then not only was the resistance to it lawful, but likewise the very fact on which the other ground of condemnation rests is totally removed. For if no right to visit and search, then no ulterior right of seizing, and bringing in, and proceeding to adjudication; and it is in the course of those proceedings alone, that the facts are produced, that she is a *French* ship trading in slaves; and if these facts are made known to the seizer by his own unwarranted acts, he cannot avail himself of discoveries thus unlawfully produced, nor take advantage of the conse-

quences of his own wrong. Supposing, however, that it should appear that he had a right to visit and search, and therefore to avail himself of all the information he so acquired, the question would then be, whether that information has established all the necessary facts?—The first is, that this was a *French* ship intentionally employed in the Slave-trade, which, I have already intimated, appears to be sufficiently shewn. The second is, that such a trading is a contravention of the *French* law ; for it has been repeatedly admitted that the Court, in order to support this sentence of condemnation, must have the foundation of the trade being prohibited by the law of the country to which the party belongs.

Upon the first question, whether the right of search exists in time of peace, I have to observe, that two principles of public law are generally recognized as fundamental. One is the perfect equality and entire independence of all distinct States. Relative magnitude creates no distinction of right ; relative imbecility, whether permanent or casual, gives no additional right to the more powerful neighbour ; and any advantage seized upon that ground is mere usurpation. This is the great foundation of public law, which it mainly concerns the peace of mankind, both in their politic and private capacities, to preserve inviolate. The second is, that all nations being equal, all have an equal right to the uninterrupted use of the unappropriated parts of the ocean for their navigation. In places where no local authority exists, where the subjects of all States meet upon a footing of entire equality and independence, no one

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State, or any of its subjects, has a right to assume or exercise authority over the subjects of another. I can find no authority that gives the right of interruption to the navigation of States in amity upon the high seas, excepting that which the rights of war give to both belligerents against neutrals. This right, incommodious as its exercise may occasionally be to those who are subjected to it, has been fully established, in the legal practice of nations, having for its foundation the necessities of self-defence, in preventing the enemy from being supplied with the instruments of war, and from having his means of annoyance augmented by the advantages of maritime commerce. Against the property of his enemy each belligerent has the extreme rights of war. Against that of neutrals the friends of both, each has the right of visitation and search, and of pursuing an inquiry whether they are employed in the service of his enemy, the right being subject, in almost all cases of an inquiry wrongfully pursued, to a compensation in costs and damages. With professed pirates there is no state of peace. They are the enemies of every country, and at all times; and therefore are universally subject to the extreme rights of war. An ancient authority, the laws of *Oleron*, composed at the time of the Crusades, and, as supposed, by an eminent leader in those expeditions, our own *Rich. I.* represents *infidels* as equally subject to those rights, but this rests partly upon the ground of notions long ago exploded, that such persons could have no fellowship, no peaceful communion with the Faithful; and still more upon the ground of fact that they were for many centuries

Laws of Oleron,  
Section 45.

engaged in real hostilities with the Christian States. Another exploded practice was that of princes granting private letters of marque against the subjects of powers in amity by whom they had been injured without being able to obtain redress from the sovereign or tribunals of that country. But at present, under the law, as now generally understood and practised, no nation can exercise a right of visitation and search upon the common and unappropriated parts of the sea, save only on the belligerent claim. If it be asked why the right of search does not exist in time of peace as well as in war, the answer is prompt; that it has not the same foundation on which alone it is tolerated in war—the necessities of self-defence. They introduced it in war; and practice has established it. No such necessities have introduced it in time of peace, and no such practice has established it. It is true, that wild claims (alluded to in the argument) have been occasionally set up by nations, particularly those of *Spain* and *Portugal*, in the *East* and *West Indian* seas: but these are claims of a nature quite foreign to the present question, being claims not of a general right of visitation and search upon the high seas unappropriated, but extravagant claims to the appropriation of particular seas, founded upon some grants of a pretended authority, or upon some ancient exclusive usurpation. Upon a principle much more just in itself and more temperately applied, maritime States have claimed a right of visitation and inquiry within those parts of the ocean adjoining to their shores, which the common courtesy of nations has for their common convenience allowed to be considered

as parts of their dominions for various domestic purposes, and particularly for fiscal or defensive regulations more immediately affecting their safety and welfare. Such are our hovering laws, which within certain limited distances, more or less moderately assigned, subject foreign vessels to such examination. This has nothing in common with a right of visitation and search upon the unappropriated parts of the ocean. A recent *Swedish* claim of examination on the high seas, though confined to foreign ships bound to *Swedish* ports, and accompanied in a manner not very consistent or intelligible, with a disclaimer of all right of visitation, was resisted by our Government as unlawful, and was finally withdrawn.

The right of visitation being in this present case exercised in time of peace, the question arises, how is it to be legalised? And looking to what I have described as the known existing law of nations evidenced by all authority and all practice, it must be upon the ground that the captured vessel is to be taken *legally* as a pirate, or else some new ground is to be assumed on which this right which has been distinctly admitted not to exist generally in time of peace, can be supported. Wherever it has existed, it has existed upon the ground of repelling injury, and as a measure of self-defence. No practice that exists in the world carries it farther.

It is perfectly clear, that this vessel cannot be deemed a pirate from any want of a national character legally obtained. She is the property not of sea rovers, but of *French*, acknowledged domiciled subjects. She has a *French* pass, *French* register,



and all proper documents, and is an acknowledged portion of the mercantile marine of that country. If, therefore, the character of a pirate can be impressed upon her, it must be only on the ground of her occupation as a slave-trader; no other act of piracy being imputed. The question then comes to this:—Can the occupation of this *French* vessel be legally deemed a piracy, inferring, as it must do, if it be so, all the pains and penalties of piracy? I must remember, that in discussing this question, I must consider it, not according to any private moral apprehensions of my own (if I entertained them ever so sincerely), but as *the law* considers it: and, looking at the question in that direction, I think it requires no labour of proof to shew that such an occupation cannot be deemed a legal piracy. The very statute lately passed which makes it a trans-portable offence in any *British* subject to be concerned in this trade, affords a decisive proof that it was not liable to be considered as a piracy, and a capital offence, as it would be in foreigners as well as *British* subjects, if it was a piracy at all. In truth it wants some of the distinguishing features of that offence. It is not the act of freebooters, enemies of the human race, renouncing every country, and ravaging every country in its coasts and vessels indiscriminately, and thereby creating an universal terror and alarm; but of persons confining their transactions (reprehensible as they may be) to particular countries, without exciting the slightest apprehension in others. It is not the act of persons insulting and assailing coasts and vessels against the will

will of the Governments and the course of their laws, but of persons resorting thither to carry on *a traffic* (as it is there most unfortunately deemed), not only recognised but invited by the institutions and administrations of those barbarous communities. But it is unnecessary to pursue this topic further. It has not been contended in argument, that the common case of dealing in slaves could be deemed a piracy in law. In all the fervor of opinion which the agitation of all questions relating to this practice has excited in the minds of many intelligent persons in this country, no attempt has ever been thought of, at least with any visible effect, to submit any such question to the judgment of the law by such a prosecution of any form instituted in any Court: and no lawyer, I presume, could be found hardy enough to maintain, that an indictment for piracy could be supported by the mere evidence of a trading in slaves. Be the malignity of the practice what it may, it is not that of *piracy*, in legal consideration.

Piracy being excluded, the Court has to look for some new and peculiar ground: but in the first place a new and very extensive ground is offered to it by the suggestion, which has been strongly pressed, that this trade, if not the crime of piracy, is nevertheless *crime*, and that every nation, and indeed every individual has not only a right, but a duty, to prevent in every place the commission of crime. It is a sphere of duty sufficiently large that is thus opened out to communities and to their members. But to establish the consequence required, it is first

necessary to establish that the right to interpose by force to prevent the commission of crime, commences not upon the commencement of the overt act, nor upon the evident approach toward it; but on the bare surmise grounded on the mere possibility; for unless it goes that length it will not support the right of forcible inquiry and search. What are the proximate circumstances which confer on you the right of intruding yourself into a foreign ship, over which you have no authority whatever, or of demanding the submission of its crew to your inquiry whether they mean to deal in the traffic of slaves, not in your country but in one with which you have no connexion? Where is the law that has defined those circumstances and created that right under their existence? Secondly, it must be shewn that the act imputed to the parties is unquestionably and legally criminal by the universal law of nations; for the right of search claimed makes no distinctions, and in truth can make none; for till the ship is searched it cannot be known whether she is a Slave-trader or not, and whether she belongs to a nation which admits the act to be criminal, or to one which maintains it to be simply commercial—and I say *legally* criminal, because neither this Court nor any other can carry its private apprehensions, independent of law, into its public judgements on the quality of actions. It must conform to the judgement of the law upon that subject; and acting as a Court in the administration of law, it cannot attribute criminality to an act where the law imputes none. It must look to the legal standard of morality; and upon a question of

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of this nature, That standard must be found in the Law of Nations as fixed and evidenced by general and ancient and admitted practice, by treaties and by the general tenour of the laws and ordinances and the formal transactions of civilized States; and looking to those authorities, I find a difficulty in maintaining that the traffic is legally criminal.

Let me not be misunderstood, or misrepresented, as a professed apologist for this practice, when I state facts which no man can deny—that personal slavery arising out of forcible captivity is coeval with the earliest periods of the history of mankind—that it is found existing (and as far as appears without animadversion) in the earliest and most authentic records of the human race—that it is recognized by the codes of the most polished nations of antiquity—that under the light of christianity itself, the possession of persons so acquired has been in every civilized country invested with the character of property, and secured as such by all the protections of law—that solemn treaties have been framed and national monopolies eagerly fought, to facilitate and extend the commerce in this asserted property—and all this, with all the sanctions of law, public and municipal, and without any opposition, except the protests of a few private moralists, little heard, and less attended to, in every country, till within these very few years, in this particular country. If the matter rested here, I fear it would have been deemed a most extravagant assumption in any Court of the Law of Nations, to pronounce that this practice, the tolerated, the approved, the encouraged object

ject of law, ever since man became subject to law, was prohibited by that law, and was legally criminal. But the matter does not rest here. Within these few years a considerable change of opinion has taken place, particularly in this country. Formal declarations have been made, and laws enacted, in reprobation of this practice ; and pains, ably and zealously conducted, have been taken to induce other countries to follow the example ; but at present with insufficient effect : for there *are* nations which adhere to the practice, under all the encouragement which their own laws can give it. What is the doctrine of our Courts of the Law of Nations relatively to them ? Why, that their practice is to be respected ; that their slaves if taken are to be restored to them ; and if not taken under innocent mistake, to be restored with costs and damages.—All this, surely, upon the ground that such conduct on the part of any State is no departure from the Law of Nations ; because, if it were, no such respect could be allowed to it, upon an exemption of its own making ; for no nation can privilege itself to commit a crime against the Law of Nations by a mere municipal regulation of its own. And if our understanding and administration of the Law of Nations be, that every nation, independently of treaties, retains a legal right to carry on this traffic, and that the trade carried on under that authority is to be respected by all tribunals, foreign as well as domestick, it is not easy to find any consistent grounds on which to maintain that the traffic, according to our views of that law, is criminal.

Against the subjects of countries which have issued  
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declarations hostile to the trade, the Courts have not unfairly applied the *argumentum ad homines*. At the same time, it is impossible not to feel (and with concern), that if the real understanding of the law, both in this country and others, is to be collected from public acts as well as from public declarations, it will at least be difficult to determine with certainty and precision what that understanding really is ; some parts of their systems looking one way, and some another. The notorious fact is, that in the dominions of this country and others, many thousands of persons are held as legal property, they and their posterity, upon no other original title than that which I am now called upon to pronounce a crime—every one of these instances attended with all the aggravation that appertains to the long continuation of crime, if crime it be ; and yet protected by law, with all the securities that can be given to property in its most respected forms. Recent treaties with Foreign Powers stipulate for a permitted continuance of this traffic to them for a course of years, and in extensive districts, and without any limitation of the numbers they may export—that is, according to the argument that has been held, contracts for the commission of crime, without stint, throughout those districts, and during those periods of time ! In such a state of law and fact, at home and abroad, it is more than difficult to arrive at the conclusion, and for this Court, representing this country, to notify such conclusion to foreign parties, that in its clear and consistent judgment of the Law of Nations upon this traffic, it is a gross violation of that law.

Much stress is laid upon a solemn declaration of  
very

very eminent persons assembled in congress, whose rank, high as it is, is by no means the most respectable foundation of the weight of their opinion that this traffic is contrary to all religion and morality. Great as the reverence due to such authorities may be, they cannot, I think, be admitted to have the force of overruling the established course of the general Law of Nations. Suppose an equal number of foreign personages, equal in rank and station, and, if such could be found, in talents, were to declare that the right of search in time of war, as exercised on neutrals, was contrary to all reason and justice, this country, I presume, would not attribute any such effect to such opinions so delivered, even although they were not accompanied, as this declaration is, with any contemporary acts, which evinced that they were considered by the parties themselves rather as speculative opinions than as drawing after them the obligation of a public and practical conformity; for otherwise some difficulty might occur in reconciling the stipulated continuation of this traffic contained in some treaties framed at no great distance of time, with the description of its nature and quality as represented in this declaration.

It is next said that every country has a right to enforce its own navigation laws; and so it certainly has, so far as it does not interfere with the rights of others. It has a right to see that its own vessels are duly navigated, but it has no right in consequence to visit and search all the apparent vessels of other countries on the high seas, in order to institute an inquiry whether they are not in truth *British* vessels violating *British* laws. No such right has ever been claimed, nor can it be exercised without the oppression

pression of interrupting and harassing the real and lawful navigation of other countries; for the right of search when it exists at all, is universal, and will extend to vessels of all countries, whether they tolerate the Slave-trade or not; and whether the vessels are employed in Slave-trading or in any other traffic. It is no objection to say that *British* ships may thus by disguise elude the obligations of *British* law. The answer of the foreigner is ready, that you have no right to provide against that inconvenience by imposing a burthen upon his navigation. If even the question were reduced to this, that either all *British* ships might fraudulently escape, or all foreign ships be injuriously harassed, *Great Britain* could not claim the option to embrace the latter branch of the alternative. When you complain that the regulation cannot be enforced without the exercise of such a right, the answer again is, that you ought not to make regulations which you cannot enforce without trespassing on the rights of others. If it were a matter by which your own safety was affected, the necessities of self-defence would fully justify; but in a matter in which your own safety is in no degree concerned, you have no right to prevent a suspected injustice towards another, by committing an actual injustice of your own.

The next argument is, that the Legislature must have contemplated the exercise of this right in time of peace; otherwise they have left the remedy incomplete, and peace in *Europe* will be war in *Africa*. The Legislature must be understood to have contemplated all that was within its power, and no more. It provided for the existing occasion,  
and



and left to future wisdom to provide for future times. Nothing can be more clear than that it was so understood by the *British* Government; for the project of the Treaty proposed by *Great Britain* to *France* in 1815, is, “that permission should be reciprocally given by each nation to search and bring in the ships of each other;” and when the permission of neutrals to have their ships searched is asked at the commencement of a war, it may then be time enough to admit that the right stands on exactly the same footing in time of war and in time of peace. The fact turned out to be, that such permission was actually refused by *France*, upon the express ground that she would not tolerate any maritime police to be exercised on her subjects, but by herself. Nor can it be matter of just surprize or resentment, that That people should be willing to retain, what every independent nation must be averse to part with, the exclusive right of executing their own laws.

It is pressed as a difficulty, what is to be done, if a *French* ship laden with slaves for a *French* port is brought in? I answer, without hesitation, restore the possession which has been unlawfully divested:—rescind the illegal act done by your own subject: and leave the foreigner to the justice of his own country. What evil follows? If the laws of *France* do not prohibit, you admit that condemnation cannot take place in a *British* Court. But if the law of *France* be what you contend, what would have followed upon its arrival at *Martinique*, the port whither it was bound? That all the penalties of the *French* law would have been immediately thundered upon it. If your case be true, there will be no failure  
of

of justice. Why is the *British* judge to intrude himself in *subsidium juris*, when every thing requisite will be performed in the *French* Court, in a legal and effectual manner? Why is the *British* judge, professing, as he does, to apply the *French* law, to assume cognizance for the mere purpose of directing that the penalties shall go to the *British* Crown and its subjects, which that law has appropriated to the *French* Crown and its subjects, thereby combining, in one act of this usurped authority, an aggression upon *French* property as well as upon *French* jurisdiction?

It is said, and with just concern, that if not permitted in time of peace it will be extremely difficult to suppress the traffic. It will be so: and no man can deny, that the suppression, however desirable, and however sought, is attended with enormous difficulties; difficulties which have baffled the most zealous endeavours for many years. To every man it must have been evident that without a general and sincere concurrence of all the maritime States, in the principle and in the proper modes of pursuing it, comparatively but little of positive good could be acquired; so far at least, as the interests of the victims of this commerce were concerned in it; and to every man who looks to the rival claims of these States, to their established habits of trade, to their real or pretended wants, to their different modes of thinking, and to their real mode of acting upon this particular subject, it must be equally evident that such a concurrence was matter of very difficult attainment. But the difficulty of the attainment will not legalise measures that are otherwise illegal. To press forward to a  
great

great principle by breaking through every other great principle that stands in the way of its establishment, to force the way to the liberation of *Africa* by trampling on the independence of other States in *Europe*, in short to procure an eminent good by means that are unlawful, is as little consonant to private morality as to public justice. Obtain the concurrence of other nations, if you can, by application, by remonstrance, by example, by every peaceable instrument which man can employ to attract the consent of man. But a nation is not justified in assuming rights that do not belong to her, merely because she means to apply them to a laudable purpose; nor in setting out upon a moral crusade of converting other nations by acts of unlawful force. Nor is it to be argued, that because other nations approve the ultimate purpose, they must therefore submit to every measure which any one State or its subjects may inconsiderately adopt for its attainment. In this very case nothing can be clearer than that the only *French* law produced is in direct contradiction to such a notion; because approving as it does (though to a very limited extent) the abolition, it nevertheless reserves to its own authorities the cognizance of each cause and the appropriation of the penalties.

If I felt it necessary to press the consideration further, it would be by stating the gigantic mischiefs which such a claim is likely to produce. It is no secret, particularly in this place, that the right of search in time of war, though unquestionable, is not submitted to without complaints loud and bitter, in spite of all the modifications that can be applied to it.

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If this right of war is imported into peace by convention, it will be for the prudence of States to regulate by that convention the exercise of the right with all the softenings of which it is capable. Treaties, however, it must be remembered, are perishable things, and their obligations are dissipated by the first hostility. The covenants, however solemn, for the abolition of the trade, or for the exercise of modes of prevention, co-exist only with the relations of amity amongst the confederate States. At the same time it may be hoped, that so long as the treaties do exist, and their obligations are sincerely and reciprocally respected, the exercise of a right, which *pro tanto* converts a state of peace into a state of war, may be so conducted as not to excite just irritation. But if it be assumed by force, and left at large to operate reciprocally upon the ships of every State (for it must be a right of All against All), without any other limits as to time, place, or mode of inquiry than such as the prudence of particular States, or their individual subjects, may impose, I leave the tragedy contained in this case to illustrate the effects that are likely to arise in the very first stages of the process, without adding to the account what must be considered as a most awful part of it, the perpetual irritation and the universal hostility which are likely to ensue.

Let it however be taken for the present, that the whole of these premises tending to shew that no right of search upon the high seas exists in time of peace are either unsound in themselves or are strained to produce a conclusion that is so. I proceed to inquire how far the *French* law had actually abolished

the Slave-trade at the time this adventure occurred ; having already observed that if it were not, the sentence of condemnation was admitted to be unmain-  
tainable, and that no proof whatever of any *French* law was produced in the Court below either by the exhibition of the law itself or by the information received from foreign professors and practisers of that law, or by any thing else than the mere assertion of the prosecutor in the libel. What proof is offered is brought in upon the appeal, and the question depends on its sufficiency.

The actual state of the matter, as I collect it from these documents, is this:—On the 27th of July 1815, the *British* Minister at *Paris* writes a note to Prince *Talleyrand*, then minister to the King of *France*, enclosing a protocol of the 15th conference, and expressing a desire, on the part of his Court, to be informed, whether, under the law of *France* as it then stood, it was prohibited to *French* subjects to carry on the Slave-trade. The *French* Minister informs him in answer, on the 30th of July, that the law of the Usurper on that subject was *null and void* (as were all his decrees); but that his Most Christian Majesty had issued *directions*, that on the part of *France* “ the traffic should cease from the present time every where and for ever.” In what form these directions were issued, or to whom addressed, does not appear ; but upon such authority it must be presumed that they were actually issued. It is, however, no violation of the respect due to that authority to inquire what was the result or effect of those directions so given. What followed in obedience to them

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them in any public and binding form? And I fear I am compelled to say that nothing of the kind followed, and that the directions must have slept in the portfolio of the Office to which they were addressed; for it is, I think, impossible, that if any public and authoritative ordinance had followed, it could have escaped the sleepless attention of many persons in our own country to all public foreign proceedings upon this interesting subject. Still less would it have escaped the notice of the *British* resident Minister, who at the distance of a year and a half is compelled on the part of his own Court to express a curiosity to know what laws, ordinances, instructions, and other public and ostensible acts had passed for the abolition of the Slave-trade.

On the 30th of *November* in the same year, the additional article of the Definitive Treaty, a very so- App. (N.)  
 lemn instrument most undoubtedly, is formally and publicly executed, and it is in these terms:—"The  
 " high contracting parties, sincerely desiring to give  
 " effect to the measures on which they deliberated at  
 " the congress of *Vienna*, for the complete and uni-  
 " versal abolition of the Slave-trade, and having each  
 " in their respective dominions prohibited, without  
 " restriction, their colonies and subjects, from taking  
 " any part whatever in this traffic, engage to renew,  
 " conjointly, their efforts, with a view to ensure final  
 " success to the principles which they proclaimed in  
 " the declaration of the 8th *February* 1815, and to  
 " concert, without loss of time, by their Minister at  
 " the Court of *London*, the most effectual measures  
 " for the entire and definitive abolition of a traffic  
 " fo

“ so odious and so highly reprov'd by the laws of  
“ religion and nature.”

Now what are the effects of this Treaty? According to the view I take of it they are two, and two only; one, declaratory of a fact, the other, promissory of future measures. It is to be observed that the Treaty itself does not abolish the Slave-trade, it does not inform the subjects that that trade is *hereby* abolished, and that by virtue of the prohibitions *therein* contained, its subjects shall not in future carry on that trade; but the contracting Powers mutually inform each other of the fact, that they *have* in their respective dominions abolished the Slave-trade, without stating at all the mode in which that abolition had taken place. It next engages to take future measures for the universal abolition. That with respect to both the declaratory and promissory parts, *Great Britain* has acted with the *optima fides* is known to the whole world, which has witnessed its domestic laws as well as its foreign negotiations.

I am very far from intimating that the Government of this country did not act with perfect propriety in accepting the assurance that the *French* Government had actually abolished the Slave-trade, as a sufficient proof of the fact; but the fact is now denied by a person who has a right to deny it; for though a *French* subject, he is not bound to acknowledge the existence of any law that has not publicly appeared, and the other party having taken upon himself the burden of proving it in the course of a legal enquiry, the Court is compelled to demand and expect the ordinary evidence of such a disputed fact.

It was not till the 15th of *January* in the present year that the *British* resident Minister applies for the communication I have described, of all laws, instructions, ordonnances, and so on; he receives in return, what is delivered by the *French* Minister as *the* ordonnance, bearing date only one week before the requested communication, namely, the 8th of *January*. It has been asserted in argument, that no such ordonnance has yet up to this very hour even appeared in any printed or public form, however much it might import both *French* subjects and the subjects of foreign States so to receive it: how that fact may be I cannot say; but I observe it appears before me in a manuscript form, and by enquiry at the Secretary of State's Office I find it exists there in no other plight or condition.

In transmitting this to the *British* Government the *British* Minister observes, it is not the document he had reason to expect, and certainly with much propriety; for how does the document answer his requisition? His requisition is for all laws, ordonnances, instructions, and so forth. How does this, a simple ordonnance, professing to have passed only a week before, realise the assurance given on the 30th of *July* 1815, that the traffic "should cease from the present time every where and for ever?" or how does this realise the promise made in *November*, that measures should be taken without loss of time to prohibit not only *French* colonies but *French* subjects likewise from taking any part whatever in this traffic? What is this regulation in substance? Why it is a mere prospective colonial regulation, prohibiting the importa-



tion of slaves into the *French* colonies from the 8th of *January* 1817? Consistently with this declaration, even if it does exist in the form and with the force of a law, *French* subjects may be yet the common carriers of slaves to any foreign settlement that will admit them, and may devote their capital and their industry unmolested by law, to the supply of any such markets.

Supposing, however, the regulations to contain the fullest and most entire fulfilment of the engagement of *France*, both in time and in substance, what possible application can a prospective regulation of *January* 1817 have to a transaction of *March* in 1816?

The Counsel, fully sensible of the difficulty, have been obliged to resort, first, to the conduct of the master, whose studious concealment of his transactions argues, as they contend, his consciousness of their illegality. That from the fervour which the agitation of such questions had excited, any thing and every thing might be feared in that quarter of the globe is not at all extraordinary; but the concealment of the master, if even much greater than it is, would not, under those apprehensions, or indeed under any apprehensions, prove the existence of a law that did not exist. They are next driven to the supposition of intermediate edicts, though the *French* Minister has not thought fit to produce them. I must observe, first, that the prohibition of the introduction of slaves into her colonies would be the first step that would be taken, or, as they express it, the *initiative* of any course of regulations; and, secondly, that nobody is now to be told that a modern edict  
which

which does not appear, cannot be presumed ; and that no penal law of any State can bind the conduct of its subjects, unless it is conveyed to their attention in a way which excludes the possibility of honest ignorance. Surely, there is no case in which the maxim, that what does not appear is to be treated in the same way as if it did not exist, more fully and forcibly applies than one in which they have been demanded by the person who had a right to demand them, and have been withheld by those who had a duty to produce them. The very production of a law professing to be enacted in the beginning of 1817, is a satisfactory proof that no such law existed in 1816, the year of this transaction.

It would be going further than the necessities of the present case require me to do, to say that the evidence now offered does not enable me to assert that the *French* law prohibited its subjects *from taking any part whatever in this traffic*. It is enough to say, that no law is shewn, which can have any bearing upon this transaction. The Usurper's law was *dead born* ; and if any law existed at the time of this transaction, it must be that which permitted the traffic for five years ; for the authority of that law could not be destroyed by the usurpation : but, whether it had existence or not, the seizer has entirely failed in the task he has undertaken of proving the existence of a prohibitory law, enacted by the legal government, which can be applied to the present transaction, and therefore upon that ground, as well as upon the other, I think myself called upon to reverse this judgement.

Upon the matter of costs and damages that have  
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been

been prayed, I must observe that it is the first case of the kind, and that the question itself is *primæ impressionis*, and that upon both grounds it is not the inclination of the Court to inflict such a censure. If a second case should occur, it will require, (in my judgment till corrected), and undoubtedly shall receive, a different consideration.

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# APPENDIX.

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## APPENDIX (A.)

**EXTRACT** from the Definitive Treaty of Peace between Great Britain and France ; signed at Paris the 30th of May 1814.

### *Additional Article.*

1st.—His Most Christian Majesty, concurring without reserve in the sentiments of His Britannic Majesty, with respect to a description of traffic repugnant to the principles of natural justice and of the enlightened age in which we live, engages to unite all His efforts to those of His Britannic Majesty, at the approaching Congress, to induce all the powers of Christendom to decree the abolition of the Slave Trade, so that the said trade shall cease universally, as it shall cease definitively, under any circumstances, on the part of the French Government, in the course of five years ; and that during the said period no slave merchant shall import or sell slaves, except in the colonies of the State of which he is a subject.

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## APPENDIX (B.)

**Extract** of a Letter from Lord Castlereagh to the Duke of Wellington ; dated Foreign Office, August 6th, 1814.

A second regulation, highly important to prevail on France to accede to, is, a reciprocal permission to our respective cruisers, within certain latitudes, to visit the merchant ships of the other power, and, if found with Slaves on board, in contravention of the law of their particular State, to carry or send them in for adjudication. To soften the exercise of this power, perhaps it might be expedient to require the sentence of condemnation to be passed in the Courts of Admiralty of the country to which the ship detained belongs ; the proceeds, if condemned, being divided between the captors and the State. Some power of this nature, within the tract of the Slave Trade, is of the first importance.

## A P P E N D I X.

### APPENDIX (C.)

Extract of a Letter from the Duke of Wellington to the Prince of Benevento; dated Paris, August 26th 1814.

IT would be desirable, secondly, that the ships of war of both nations should, within the northern tropic, and as far to the westward as longitude twenty-five from Greenwich, have the permission to visit the merchant ships of both, and to carry or send in for adjudication those found with Slaves on board, in contravention of the law of the State to which they should belong. It would be expedient to arrange that the adjudication should take place in the Courts of the Admiralty of the Country to which they belong, and that the proceeds, if the vessel should be condemned, should be divided between the Captors and the State.

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### APPENDIX (D.)

Extract of a Letter from the Duke of Wellington to Lord Castlereagh; dated Paris, November 5th 1814.

My Lord,

HAVING had an opportunity of talking with the Minister of Marine last night, regarding the measures to be adopted to carry into execution the King's orders for preventing the Slave Trade on the north-west coast of Africa, I discovered that that proposed in my note of the 26th of August, addressed to the Prince of Benevente, viz. *The reciprocal search, by ships of war of both nations, of vessels trading on the coasts, was so disagreeable to the Government, and I had seen in different publications that it was likely to be so much so to the nation, that there was no chance in succeeding in getting it adopted,* and therefore I prepared the memorandum, of which I enclose the copy, to be submitted to the Minister, at a meeting which I was to have with him this day.

## A P P E N D I X.

### APPENDIX (E.)

Extract from the Protocol of the second special Conference relative to the Abolition of the Slave Trade.  
Vienna, January 28th, 1815.

LORD Castlereagh ayant dit dans le cours de ces explications que l'abolition de la Traité sur toutes les côtes au Nord de l'Equateur, étoit surtout désirable, comme fournissant les moyens les plus simples et les plus sûrs pour mettre un terme à tout trafic illegal et fraudulent, et pour exercer la Police contre les Batimens qui se preteroient à un pareil trafic, M. le Prince Talleyrand a prié Lord Castlereagh de déterminer le sens de cette dernière expression. Lord Castlereagh a répondu qu'il entendoit par cette Police celle que tout Gouvernement exerceoit en vertu de sa propre Souveraineté, ou de ses Traités particuliers avec d'autres Puissances.

M. le Prince Talleyrand, et M. le Comte Palmella ont dit, *qu'ils n'admettoient en-fait de police maritime que celle que chaque Puissance exerce sur ses propres Batimens.*

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### APPENDIX (F.)

#### *Declaration.*

Vienna, Feb. 8th, 1815.

The Plenipotentiaries of the Powers who signed the Treaty of Paris, the 30th May 1814, assembled in Congress:

HAVING taken into consideration, that the traffic known under the name of the *African Slave Trade* has been regarded, by just and enlightened men of all ages, *as repugnant to the principles of humanity and of universal morality*; that the particular circumstances to which this traffic owes its origin, and the difficulty of abruptly interrupting its progress, have to a certain degree lessened the odium of continuing it; but that at last the public voice in all civilized countries has demanded that it should be suppressed as soon as possible; that since the character and the details of this traffic have been better known, and the evils of every sort which accompanied it completely unveiled, several European Governments have resolved to suppress it, and that successively all Powers possessing colonies in different parts of the world have acknowledged,

## A P P E N D I X.

ledged, either by legislative acts or by treaties and other formal engagements, the obligation and necessity of abolishing it ; that by a separate article of the last treaty of Paris, Great Britain and France engaged to unite their efforts at the Congress at Vienna to engage all the Powers in Christendom to pronounce the universal and definitive abolition of the Slave Trade ; that the Plenipotentiaries assembled at this Congress cannot better honour their mission, fulfil their duty, and manifest the principles which guide their august Sovereigns, than by labouring to realize this engagement, and by proclaiming in the name of their Sovereigns the desire to put an end to a scourge which has so long desolated Africa, degraded Europe, and afflicted humanity :—

The said Plenipotentiaries have agreed to open their deliberations as to the means of accomplishing so salutary an object, by a solemn declaration of the principles which have guided them in this work.

Fully authorized to such an act by the unanimous adherence of their respective Courts to the principle announced in the said separate article of the Treaty of Paris, they in consequence declare in the face of Europe, that, looking upon the universal abolition of the Slave Trade as a measure particularly worthy of their attention, conformable to the spirit of the age, and to the generous principles of their august Sovereigns, they are animated with a sincere desire to concur, by every means in their power, in the most prompt and effectual execution of this measure, and to act in the employment of those means with all the zeal and all the perseverance which so great and good a cause merits.

Too well informed of the sentiments of their Sovereigns not to foresee, that, however honourable may be their object, they would not pursue it without a just regard to the interests, the habits, and even the prejudices of their subjects ; the said Plenipotentiaries at the same time acknowledge, that the general declaration should not prejudice the period which each particular Power should look upon as the most expedient for the definitive abolition of the traffic in Slaves. Consequently the determination of the period when this traffic ought universally to cease, will be an object of negotiation between the different Powers ; it being however well understood that no means proper to ensure and accelerate its progress should be neglected — and that the reciprocal engagements contracted by the present declaration between the Sovereigns who have taken part in it, should not be considered as fulfilled until the moment when complete success shall have crowned their united efforts.

In making this declaration known to Europe, and to all the  
civilized

## A P P E N D I X.

civilized nations of the earth, the said Plenipotentiaries flatter themselves they shall engage all other Governments, and particularly those who, in abolishing the Traffic in Slaves, have already manifested the same sentiments, to support them with their suffrage in a cause, of which the final triumph will be one of the greatest monuments of the age which undertook it, and which shall have gloriously carried it into complete effect.

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### APPENDIX (G.)

#### *Translation.*

**NAPOLEON** Emperor of the French,

**WE** have decreed and do decree as follows :

**ART. 1st.** From the date of the publication of the present Decree, the Slave Trade is abolished. There shall not be permitted any expedition for this Trade, either in the ports of France, or those of Our Colonies.

**2d.** There shall not be introduced, for the purpose of sale in Our Colonies, any Negro, the produce of this Trade, whether French or Foreign.

**3d.** The breach of this Decree shall be punished by the Confiscation of the Vessel and Cargo, to be pronounced by *Our Courts and Tribunals*.

**4th.** Nevertheless, the Persons who, before the publication of the present Decree, shall have fitted out and dispatched vessels for this Trade, shall be at liberty to sell their cargoes in Our Colonies.

**5th.** Our Ministers are charged with the execution of the present Decree.

By the Emperor. (Signed) **NAPOLEON.**

The Minister Secretary of State,

(Signed) The Duke of **BASSANO.**

March, 1815.



## A P P E N D I X.

### APPENDIX (H.)

Note from Viscount Castlereagh to Prince Talleyrand,  
dated Paris, 27th July 1815.

Prince,

Paris, July 27th, 1815.

THE official order to the Admiralty, which I had the honour of transmitting to Your Highness on the 25th, having suspended hostilities against the coast of France, and against French Ships carrying the White Flag, I have been directed by my Court, without delay, to call your attention to the necessity of guarding, under these circumstances, against any possible revival of the Slave Trade.

The British Government conceive, that under the operation of the law of France, as it now stands, it is strictly prohibited to French subjects to carry on a traffic in slaves, and that nothing but a specific ordinance could again revive that commerce; but whether this be the true construction, or not, of the state of the law in a technical sense, they feel persuaded that His Most Christian Majesty will never lend His authority to revive a system of this nature, which has been *de facto* abolished.

I have desired Sir Charles Stuart to communicate to your Highness what passed on this subject at Ghent; the assurance that the King was at that time pleased to give to the British Ambassador, entirely tranquillized the Prince Regent's Ministers on this subject; but now that His Majesty has been happily restored to His throne, they are most anxious to be enabled at once to relieve the solicitude of the British nation, by declaring that the King, relieved, by the state in which the measure now stands, from those considerations of reserve which before influenced his conduct, does not hesitate to consider that question as for ever closed, in conformity with those benevolent principles which are at all times congenial with the natural feelings of His Majesty's breast.

I have the honour to be, &c. &c.

(Signed) CASTLEREAGH.

His Excellency Prince Talleyrand,  
&c. &c.

## A P P E N D I X.

### APPENDIX I.

Note from Prince Talleyrand to Lord Castlereagh,  
dated Paris, 30th July 1815.

#### *Translation.*

My Lord,

Paris, July 30th, 1815.

I HAVE the honour to acquaint your Excellency that the King, in consequence of the conversation he has had with Sir Charles Stuart, and of the letter which your Excellency did me the honour to write to me on the 27th instant, *has issued directions in order that, on the part of France, the traffic in slaves may cease from the present time every where and for ever.*

What had been done in this respect by the Usurper was in the first place NULL AND VOID, AS WERE ALL HIS DECREES; and moreover had been evidently dictated to him by personal motives of interest, and by hopes which he never would have conceived, had he been capable of appreciating the British Government and People. It had not therefore, and could not have, any weight with His Majesty.

But it was with regret that last year His Majesty stipulated the continuance of the traffic for a few years; He had only done so, because on the one hand he was aware that on this point there existed in France prejudices which it was at that time advisable to soothe, and that on the other hand it was not possible to ascertain with precision what length of time it would require to remove them.

Since that period these prejudices have been attacked in several publications, and with such effect as to afford His Majesty, this day, the satisfaction of following without reserve the dictates of His inclination; the more so, since it has been proved by inquiries made with the greatest care, that the prosperity of the French colonies not being compromised by the immediate abolition of the Trade, the said abolition is not contrary to the interests of His Majesty's subjects—interests which above all His Majesty thought himself bound to consult; this satisfaction is increased by the idea that His Majesty at the same time does what is agreeable to the government and people of Great Britain.

Accept, my Lord, the assurance, &c.

(Signed) The PRINCE DE TALLEYRAND.

His Excellency

Lord Viscount Castlereagh.

## A P P E N D I X

### APPENDIX (K.)

Note from Lord Castlereagh to Prince Talleyrand,  
dated Paris, July 31st, 1815.

Paris, July 31st, 1815.

THE undersigned, His Britanic Majesty's Principal Secretary of State for Foreign Affairs, has the honour to acknowledge Prince Talleyrand's note of this date, conveying to him *the decision taken by His Most Christian Majesty, finally to abolish the Slave Trade* throughout the French dominions. The undersigned will lose not a moment in transmitting this communication to his Court, and he ventures in the mean time to assure His Highness, that the King could not have taken any determination more personally grateful to the Prince Regent, and to the whole British nation.

The undersigned requests, &c.

His Highness the

(Signed) CASTLEREAGH.

Prince Talleyrand, &c. &c.

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### APPENDIX (L.)

Dispatch from Viscount Castlereagh to the Earl of  
Liverpool.

My Lord,

Paris, July 27th, 1815.

I HAVE the honour to enclose to you an extract of a protocol of the 15th conference held between the Ministers of the Four Allied Powers. I likewise transmit to your Lordship a note, which, in consequence of what passed at the 15th conference, I have addressed to Prince Talleyrand, on the subject of the Slave Trade.

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### APPENDIX (M.)

*First Enclosure.*

Extract of the Protocol of the 15th Conference.

VISCOUNT Castlereagh, His Britannic Majesty's Principal Secretary of State, &c. in reference to the communication he has made to the Conference of the orders addressed to the Admiralty to suspend all hostilities against the coast of France, observes, that  
there

## A P P E N D I X.

there is reason to foresee that French ship-owners might be induced to renew the Slave Trade, under the supposition of the peremptory and total abolition decreed by Napoleon Buonaparte having ceased with his power : that nevertheless great and powerful considerations arising from motives of humanity, and even of regard for the King's authority, require that no time should be lost to maintain in France the entire and immediate abolition of the traffic in Slaves : that if at the time of the treaty of Paris the King's Administration could wish a final but gradual stop should be put to this trade in the space of five years, for the purpose of affording the King the gratification of having consulted as much as possible the interests of the French proprietors in the colonies, ; now that the absolute prohibition has been ordained, the question assumes entirely a different shape, for if the King were entirely to revoke the said prohibition, He would give Himself the disadvantage of authorizing in the interior of France the reproach which more than once has been thrown out against His former government, of countenancing reactions, and at the same time of justifying out of France, and particularly in England, the belief of a systematic opposition to liberal ideas : that accordingly the time seems to have arrived when the Allies cannot hesitate formally to give weight in France to the immediate and entire prohibition of the Slave Trade ; a prohibition, the necessity of which has been acknowledged in principle in the transactions of the Congress at Vienna.

The other members of the Conference entirely coincide in opinion with Viscount Castlereagh ; and in order to attain this end in the manner most advantageous to the authority and consideration of the King, it is agreed, that it would be advisable to preface by a few observations the verbal communication to be made to the King and to His Administration, in order that His Majesty may be induced voluntarily to make the arrangement in question, and thus reap the advantage of an initiative, which will remove the idea in the interior of the kingdom of a tendency towards re-action, and will conciliate to the King in foreign countries the suffrages of the partizans of liberal ideas.

A confidential representation is to be made to the King accordingly.

## A P P E N D I X.

### APPENDIX (N.)

#### *Article additionnel,*

Au Traité définitif, signé à Paris le vingt Novembre 1815.

LES Hautes Puissances contractantes desirant sincèrement de donner suite aux mesures dont elles se sont occupées au congrès de Vienne relativement à l'abolition complète et universelle de la Traité des Negres d'Afrique, et ayant déjà chacune dans ses états défendu sans restriction à leurs colonies et sujets toute participation à ce trafic, s'engageant réunir de nouveau leurs efforts pour assurer le succès final des principes qu'elles ont proclamés dans la déclaration du huit Février mil huit cent quinze ; et à concerter sans perte de tems, par leurs Ministres aux Cours de Londres et de Paris, les mesures le plus efficaces pour obtenir l'abolition entière et définitive d'un commerce aussi odieux et aussi hautement reproché par les lois de la religion et de la nature.

Le présent article additionnel aura la même force et valeur que s'il étoit inséré mot à mot au Traité de ce jour ; il sera compris dans la ratification du dit Traité.

En foi de quoi les Plénipotentiaires respectifs l'ont signé, et y ont apposé le cachet de leurs armes.

Fait à Paris le vingt Novembre, l'an de grace mil huit cent quinze.

(Signé)

(L.S.) CASTLEREAGH.

(L.S.) WELLINGTON.

(Signé)

RICHELIEU.

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### APPENDIX (O.)

My Lord,

Paris, 30th January 1817.

IN compliance with the instructions contained in your Lordship's letter, marked No. 5. I have presented the accompanying note to the Duke de Richelieu, urging his Excellency to communicate to me *the official publications of the French Government*, which enact the final abolition of the Slave Trade.

After some delay I have received in answer the note I have the honour to transmit, which, though *it does not contain the documents I had reason to expect*, is accompanied by a decree, published the 8th January of the present year, which appears perfectly to meet the objects of the stipulations between the Governments.

I have the honour to be, &c.

(Signed) CH. STUART.

APPENDIX (P.)

Sir,

Paris, 15th January 1817.

With a view to guide the instructions the British Government find it necessary to transmit to the Officers in the King's service in the Colonies of the West Indies, I venture to request that your Excellency will communicate to me such copies of laws, ordinances, instructions, and other public or ostensible acts of His Most Christian Majesty and of the French Legislative Authorities, for the abolition of the Slave Trade, which may appear to be necessary for that purpose.

I have, &c.

The Duke de Richelieu.

(Signed) CH<sup>s</sup> STUART.

APPENDIX (Q.)

Monfieur l'Ambassadeur,

J'ai l'honneur d'adresser ci-joint à votre Excellence une copie de l'ordonnance du Roi qui prononce la confiscation de tout Batiment qui tenterait d'introduire dans une des Colonies Françaises des Noirs de Traité, et qui interdit de tout commandement le Capitaine Français qui se permettrait une pareille contravention. Votre Gouvernement reconnaitra dans ces dispositions de Sa Majesté la ferme résolution de maintenir l'exécution des Traités dans toutes leurs étendues, et de punir quiconque y porterait atteinte.

J'ai l'honneur, &c.

Paris, le 27 Janvier 1817.

(Signé) RICHELIEU.

S. E. M. le Chevalier Stuart.

APPENDIX (R.)

*Department de la Marine et des Colonies.*

Ordonnance du Roi.

LOUIS, par la grace de Dieu, Roi de France et de Navarre:  
Voulant pourvoir au cas où il seroit contravenu à nos ordres concernant l'abolition de la Traité des Noirs:

Sur le rapport de notre Ministre Secrétaire d'Etat de la Marine et des Colonies,

Nous avons ordonné et ordonnons ce que suit :

## A P P E N D I X.

### ARTICLE I.

Tout **Batiment** qui tenteroit d'introduire *dans une de nos Colonies* des **Noirs de Traité**, soit **François** soit **Etranger**, sera confisqué, et le **Capitaine**, s'il est **François**, interdit de tout commandement.

Sera également confisquée, en pareil cas, toute la partie de la cargaison qui ne consisteroit pas en **Esclaves** : à l'égard des **Noirs**, ils seront employés dans la Colonie aux travaux d'utilité publique.

### ARTICLE II.

Les contraventions prévues dans l'article précédent seront jugées dans la même forme que les contraventions aux lois et réglemens concernant le commerce étranger.

Quant aux **Produits** des confiscations prononcées en conformité du même article, ils seront acquis et appliqués de la même manière que sont les produits des confiscations prononcées en nature de contravention aux lois sur le commerce étranger.

### ARTICLE III.

Notre **Ministre Secrétaire d'Etat de la Marine et des Colonies** est chargé de l'exécution de la présente Ordonnance.

Donné a Paris, en notre **Château des Tuileries**, le 8 Jour de Janvier, de l'an de grace 1817, et de notre **Regne** le 22d.

(Signé) LOUIS.

Par le Roi,

(Signé) LE V<sup>te</sup> DE BOUCHAGE.

Pour Copie conforme,

Le **Ministre Secrétaire d'Etat de la Marine et des Colonies**,

(Signé) LE V<sup>te</sup> DE BOUCHAGE.

Pour ampliation,

Le **Ministre Secrétaire d'Etat de la Marine et des Colonies**,

(Signé) LE V<sup>te</sup> DE BOUCHAGE.

## A P P E N D I X.

### APPENDIX (S.)

By his Excellency Charles M'Carthy, Governor of the  
Colony of Sierra Leone and its Dependencies.

To Mr. Robert Hagan, Commander of His Majesty's Colonial  
Schooner, Queen Charlotte.

BY virtue of the power and authority vested in us by an act passed in the fifty-first year of the reign of His present Majesty, intituled, *An Act for the Abolition of the Slave Trade*, I do hereby depute and authorize you *to seize and prosecute* all ships and vessels, Slaves or Natives of Africa, carried, conveyed, or dealt with as Slaves; and all Goods and Effects whatsoever that shall or may become forfeited for any offence committed against the said act, or any other act of parliament passed for the abolition of the Slave Trade, and which shall be found upon or near to the coast of Africa, or in any ports, havens, or rivers thereof, or within the limits of any of the colonies, settlements, forts, or factories thereof.

Given under my hand and seal, at Sierra Leone, this  
28th Day of January 1816.

(Signed) CHA. M'CARTHY.

